

The Gods and Demons of the Preah Vihear Temple

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The Churning

I finally visited the Temple of Preah Vihear on 22 December 2018. Strikingly, the makers of the ancient temples of Cambodia appear infatuated with a particular Indian mythic leitmotif, the churning of the milk ocean.

In order to churn the milk-ocean, *Vishnu*, a Hindu god, turns into a turtle to allow the planting of the Mount *Mandhar*, the churner, on his shell. Next, *Vasuki*, the serpent, is wrapped around the churner. The gods and the demons, two nations that differ on just about everything, give *Vasuki* a tug for about 1000 mythological years.

The churning is a well-known Asian metaphor for the sweat and blood involved in the production of both ideas and matter – a kind of Hegel-Marx dialectic. The churning produces elixir as well as poison. To be sure, the international legal knowledge production mimics the churning.

One finds this leitmotif everywhere in Cambodia: on the walls of the *Angkor Wat* temple in Siem Reap province as well as on the walls of *Preah Vihear*. You may say the churning is a quintessential Khmer leitmotif. The Cambodian history textbooks teach that the Khmer etymology of Siem Reap is the venue of the defeat of enemy Siam. The narrative of defeat after all commands an important place in the nation's history.

Defeat found Thailand again in 1962. This time postcolonial Thailand lost a temple to Cambodia. Thailand's loss and Cambodia's win at the International Court of Justice (the ICJ) was mounted on the production of colonial stationery. In the post-colonial *Temple of Preah Vihear* case, I argue "colonial stationery—maps, photographs, and communiqués—as well as imperial customs offered evidentiary support to Cambodia, an ex-colonial state, against Thailand."



The Temple of Preah Vihear (with churning of the Milk Ocean Motif). © Prabhakar Singh

Lawyers of the dispute-settlement ilk see the *Temple of Preah Vihear* case as a precedent on (1) the application of *estoppel*, (2) reading maps as part of treaty interpretation, and (3) the ratification of inaction by acquiescence. The convenient forgetting of the Indochinese history produces remarkable legal clarity. To the teleology of inter-state dispute resolution, this wanton amnesia about semi-colonial history is a small price to pay.

The Pilgrimage

A lily-covered lake in lazy December bloom sits right at the bottom of the Dangrek hill. I pillion rode on a motorbike to the hilltop—a natural border between Cambodia and Thailand.

As though by some magic realism, the vivid landscape makes one naturally fall to the temptation of seeing the Churning occurring right in front of one's eyes. I am now forced to ponder over what [Thailand had said in 1962](#): "The general nature of the area allows access from Thailand to the Temple, whereas access from Cambodia involves the scaling of the high cliff from the Cambodian plain." (*Temple of Preah Vihear* case, 1962: p. 12).

By a reinterpretation in 2013, the ICJ has unpersuasively given away the sovereignty over the vicinity of the Temple of Preah Vihear along with its ownership to Cambodia. Who would have thought that someday men of international law would decide the ownership of the god's 12th century abode?

When at the hilltop, I receive on my Cambodian mobile number a message, as it were, from the god of the Temple of Preah Vihear: "welcome to Thailand". Technology in the god's words seemingly ossified with impunity what the ICJ has settled in hard sovereignty. Or, is the technology simply reminding the pilgrims of what Judge Moreno Quintana had said in his [dissent](#): "geographical fact" is "clearly in favour of the exercise of territorial sovereignty by the country having easy access" (Quintana's Dissent, 1962: p. 71).

Next, an army of sign-posts about temple's ownership greets me. The highflying Cambodian and the UNESCO flags planted right at the entrance of the Dangrek promontory further expells all doubts about the ownership of the Temple and the vicinity.



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Preah Vihear is

“Preah Vihear is Our Temple” © Prabhakar Singh

But the god of the Temple of Preah Vihear seems to disagree. They sent the mobile message, I imagine under the spell of the unfolding magic realism, to remind and confirm their disagreement.

The God’s Postcolonial Anxiety

A pilgrim feels as though he has entered the Temple from its rear. The main entrance to the temple, an impressive staircase rising up to the sky, is a straight two-minutes walk from the Thai side, now separated by barbed wire.

The thinking pilgrim to Dangrek inevitably lapses into thores of postcolonial ironies. Postcolonialism refers to the state of polities after the end of formal colonialism. Cambodia and Thailand therefore are both postcolonial polities. We would be incorrect however to regard their post-coloniality as isomorphic.

The doctrine *uti possidetis* “holds that where new state boundaries are created, as for example in the case of decolonization, these borders must follow existing lines of demarcation between administrative units”. (Miller: 2016; p. 34). Effectively, *uti possidetis* tells us to develop a Buddhist-style renunciation of territorial desires.

Also, *uti possidetis* seeks to prioritize peace over territorial justice. What is *uti possidetis* for semi-colonial states, however? Since such states were not territorially colonized, what do they *uti possidetis*? How and when does their *de facto* possession mature into *de jure* ownership without a colonial history to back them?

Oppenheim’s *International Law* (1905) said Siam, although independent, was a “doubtful” case in so far as its sovereignty is concerned; it was not a “civilized” nation. What is “civilization” in international law? Many conflate the “racist” with the “legal” meaning of civilization just as many talk of colonialism and imperialism interchangeably. That is legally inaccurate.

In the 19th century, civilization had a unique legal meaning; any state, Asian or European, that offered physical and economic protection to aliens, particularly of Western origin, could be considered a “civilized state”.

Japan defeated Russia the year Oppenheim’s textbook was published. Japan moreover adopted a German civil law draft even before it became a law in Germany. Having proved its might in war and having adopted western codes, Oppenheim found Japan alone to have achieved civilization in East Asia. Naturally, Asian kingdoms, Siam more than any other, looked up to Japan for cues for a membership to the League of Nations.

Consequently, by 1910, with the help of Japanese and Belgian lawyers, Siam successfully conducted internal legal reforms to bring its laws up to speed with European laws. It did not defeat any European states, as did Japan; it squared two colonial powers, the French and the British, against each other by distributing mining and teak-felling contracts to various European and North American investors. Should

any of the colonial powers attempt to grab territory already allotted to a particular “civilized” investor, the scuffle could then crystalize into a legal dispute between two European powers. For a time Siam used this technique to evade outright territorial capture in certain areas.

Notably, Japanese imperialism in Asia inverted the European colonial model just as Marx inverted Hegel. European powers pulled down native sovereignty, just as; conversely, Japan attempted to erect sovereignty by pouring investment, for example, into the *Manchukuo* nation. Japan’s declaration notwithstanding, the *Manchukuo* found no recognition by the League of Nations due to the lack of a “constitutive” acceptance by the Western powers. Europe and Japan thus stand at two ends of state-making in the 20th century.

Anyhow, Siam was tied to Western and Japanese domination by unequal treaties, unlike Cambodia’s full capture. Unequal treaties took away foreign relations and import-export custom duty rights from its unequal partner.

The Semicolonial’s Postcolonialism

The political United Nations and its “principal judicial organ” the ICJ are time-twins. Should a territorial dispute arise, as it did, between an ex-colonial and former semi-colonial polity, will international law structurally favour the ex-colonies like Cambodia? Will only the children of European colonialism reap the benefits of the European international law?

In the *Chagos advisory proceedings*, [Thailand](#) asked the ICJ about unequal treaties and decolonisation: “[O]ne could hardly deny that treaties dictated by the stronger to the weaker party would qualify as unequal treaties. This idea of inequality has been recognized and has played a crucial role in the development of international law.” (*Verbatim Record*, 2018: para. 10).

The semi-colonial states thus challenge the universality of international law by pointing to its structural bias in favour of the ex-colonial states. Be that as it may, did the majority in the *Temple of Preah Vihear* case simply supply justification for a premeditated decision? Was the majority bench rewarding Cambodia for praying first at the altar of the Peace Palace?

In “[Of International Law, Semi-colonial Thailand and Imperial Ghost](#)” I conclude that “reading two disputes involving Siam – *Cheek v. Siam* (1898) and the *Temple of Preah Vihear* (1962) – proves that both private law and public international law are structurally rigged against ex-semi-colonial nations.”

This structural paradox allows certain ex-semi-colonials, China for example, to dodge third party arbitration in favour of political settlements. China has argued that self-determination cures only the classic blue-water colonialism. China has in fact consistently evaded international courts for territorial settlements for the fear of the *Temple of Preah Vihear* precedent.

China's approach, its 21st century imperialism, is a child not of the classic European colonialism, but of the Russian, Japanese and the American imperialism of the early 20th century. International lawyers have unfortunately muddled the colonial with the imperial to no good ends.

Today, Thailand admirably leads by example on the question of peace through law: "The question is whether there are mechanisms in international law, which may alleviate the effects of inequality, without affecting the validity of the treaties in question. The Kingdom of Thailand believes that there are such mechanisms." (*Verbatim Record*, 2018: para. 15).

The Relapse into churning

The metaphor of churning is hard to miss in Indochina. While returning to India from Phnom Penh through Bangkok, I saw the chief leitmotif of the Temple of Preah Vihear, the churning of the Milk Ocean, transported into a very modern space; the Suvarnabhumi Airport.



Churning at the Suvarnabhumi Airport © Prabhakar Singh

The churning metaphor presents an important question. In the tug of nations that represents international law's life, I wonder, who the gods and the demons are?

The key to that question lies in a careful reading of the leitmotif; during the tug while gods take the tail, the demons hold the serpent's hood. One finds the demons exposed to the dangers of the serpent's poison, while gods find the safer side. The gods eventually round out the churning by keeping elixir for themselves alone.

Likewise, knowledge production, the churning, passes the cost of production to the South even as the North keeps the profits.

What might the ongoing tug of international law offer? This and some related anxieties preoccupy me these days.

I thank Völkerrechtsblog for organizing and the participants for commenting in this symposium.

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